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1st Sunset Review
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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for Preliminary Results of Full Sunset Review of the Countervailing Duty Order on Honey from Argentina

Summary

We have analyzed the substantive responses and rebuttal comments of interested parties in the full sunset review of the countervailing duty (CVD) order on honey from Argentina. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues addressed in these preliminary results.

1. Likelihood of continuation or recurrence of countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

History of the Order

On October 4, 2001, the Department of Commerce (the Department) published in the Federal Register the final affirmative countervailing duty determination on honey from Argentina. See Final Affirmative Countervailing Duty Determination: Honey from Argentina, 66 FR 50613 (October 4, 2001), and accompanying Issues and Decision Memorandum (Final Determination and I&D Memo). On December 10, 2001, the Department issued the countervailing duty order. See Notice of Countervailing Duty Order: Honey From Argentina, 66 FR 63673 (December 10, 2001) (Honey Order).

In the investigation, due to the large number of producers and exporters of honey in Argentina, and based on discussions with the Government of Argentina (GOA), the Department decided to solicit information from the GOA on an aggregate or industry-wide basis in accordance with section 777A(e)(2)(B) of the Tariff Act of 1930, as amended (the Act), rather than from individual producers and exporters. The final determination established a cash deposit rate for all producers and exporters of honey from Argentina of 5.85 percent ad valorem for all producers/exporters. This rate was based on the determination that the following six programs are countervailable :

1. Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)
2. BNA Pre-Financing of Exports Regime for the Agriculture Sector
3. Regional Productive Revitalization
4. Buenos Aires Honey Programs
    a. Line of Credit for Working Capital
    b. Line of Credit for the Acquisition of Capital Goods
    c. Technical Assistance
5. Province of Chaco Line of Credit Earmarked for the Honey Sector
6. Province of San Luis Honey Development Program
    a. Leasing Agreements
    b. CFI Lines of Credit

The Department has conducted two administrative reviews of this order. In the first administrative review, which covered two years, calendar years 2001 and 2002, the Department found two additional programs to be countervailable, the Factor de Convergencia (Convergence Factor), and the BNA Financing for Capital Goods of Argentine Origin. The resulting overall subsidy rates were 5.774 percent ad valorem for 2001, and 0.571 percent ad valorem for 2002. In the second administrative review covering calendar year 2003, the Department found an overall subsidy rate of 0.083 percent ad valorem.

Background

On November 1, 2006, the Department initiated the first sunset review of the countervailing order on honey from Argentina, pursuant to section 751(c) of the Act. See Initiation of Five-year ("Sunset") Reviews, 71 FR 64242 (November 1, 2006). The Department received notices of intent to participate from the American Honey Producers Association (AHPA) and the Sioux Honey Association (SHA) (collectively "domestic interested parties"), within the deadline specified in 19 CFR 351.218(d)(1)(i). AHPA and SHA claimed interested party status as trade or business associations, a majority of whose members manufacture, produce or wholesale a domestic like product for the United States under section 771(9)(E) of the Act; SHA also claimed interested party status under section 771(9)(E) of the Act, as domestic producers of processed and raw honey engaged in the manufacture, production, or wholesale of honey in the United States. The Department received substantive responses from the domestic interested parties and the GOA, as well as Argentine honey exporters Nexco, S.A (Nexco), HoneyMax, S.A (HoneyMax), and the Asociación de Cooperativas Argentinas (ACA).

On December 20, 2006, the Department determined that the participation of the respondent interested parties was adequate, and that it was appropriate to conduct a full sunset review. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, Re:

Adequacy Determination: Sunset Review of the Countervailing Duty Order on Honey from Argentina dated December 20, 2006, and on file in the Central Records Unit (CRU), Room B-099 of the main Commerce Building.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b)(1) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and any subsequent reviews, and whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect that net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM). Below we address the issues relevant to this sunset review, including the issues raised in the substantive responses and rebuttal comments of interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

Domestic interested parties argue that revocation of the CVD order on honey from Argentina would likely lead to continuation or recurrence of a countervailable subsidy. Domestic interested parties support their argument by claiming that the Department found nine programs countervailable in the investigation, and ten programs not used. In addition, domestic interested parties note that to date, only one program has been found terminated, and that there were two more programs, which the Department found not used in reviews subsequent to the investigation, but which may be used in the future, i.e., the BICE Norm 007: Line of Credit offered to Finance Industrial Investment Projects to Restructure and Modernize the Argentine Industry and the Fundacion Export AR.[1] According to domestic interested parties, the majority of countervailable subsidies remain in place. Of these programs, the Reintegro export subsidy was the most

[1]The BICE 007 program was determined to be not countervailable in the final determination of the investigation. However, the Department stated its intent, if an order is issued and administrative reviews are requested, to examine whether the honey industry has received any loans under BICE Norm 007 for export-related purposes. The Fundacion Export AR was determined to be not used in the final determination of the investigation. See Final Affirmative Countervailing Duty Determination: Honey from Argentina, 66 FR 50613 (October 4, 2001), and accompanying Issues and Decision Memorandum (Final Determination and I&D Memo), at Comment 17 and "Programs Determined Not Used," at section A. 7.

significant, accounting for the largest portion of the subsidies in the original investigation and the first review, before falling to zero in 2002. As the Reintegro program is still an active program in Argentina, domestic interested parties argue that there is the risk that the reimbursement rate will be increased again in the absence of an order. Also, domestic interested parties point out, there are seven additional subsidy programs found not used by Argentine producers/exporters in the original investigation and subsequent two administrative reviews, and there is no evidence that these programs have been terminated.[2] Domestic interested parties believe that the continued existence of these programs indicates the likelihood of continuation or recurrence of a countervailable subsidy.

Furthermore, the dramatic decrease of shipments of Argentine honey to the United States following the imposition of the companion antidumping duty order is a direct result of the efficacy of the order, domestic interested parties argue. They note that imports plummeted in the years from 2001 through 2004, and increased in 2005, but remain well below the levels reached prior to the original investigation.

The GOA argues that there will be no negative impact from revocation of the order because the Argentine honey industry is no longer benefitting from any subsidies and there is no likelihood that this situation will change in the foreseeable future. The GOA notes that the honey industry never received subsidies greater than the de minimis level established in the WTO Agreement on Subsidies and Countervailing Measures and under U.S. law. The GOA points out that, even if it accepted the Department's conclusion that the Reintegro program provided a countervailable subsidy, the honey industry has been ineligible to receive indirect tax rebates under this program since June 2001, and that there are no plans to change the eligibility of the program. Even a possible change in eligibility in the future would give no reason to believe that the program would be administered in a way that it will result in an over-rebate of indirect taxes affecting the production and sale of honey. Further, the GOA argues, the Convergence Factor program, an exchange rate mechanism that never should have been considered to be a countervailable subsidy, is terminated. Finally, the GOA states that the remaining programs were never found to have provided significant benefits and are not likely to do so in the future. The GOA states that the only benefits derived by the honey sector are from old, inactive programs for which residual benefits are calculated, as demonstrated in the 2003 review, and which collectively constitute a subsidy level of 0.085 percent, as calculated by the Department, i.e., below de minimis, in accordance with international agreements and U.S. law. Any subsidy levels higher than de minimis for this sector, the GOA argues, if at all, would be extremely small, and would not meet the level of "likely," as required by the international agreements and U.S. law. Therefore, the GOA states, the Department should terminate the countervailing duty order on honey from Argentina.

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[2] BNA Line of Credit to the Agricultural Producers of Patagonia; Production Pole Program for honey Producers; Province of Chubut Honey Program Under Law No. 4430/98; Province of Santiago del Estero: Creditos de Confianza; BICE Norm 011: Financing of Production of Goods Destined for Export; Enterprise Restructuring Program; and Government Backed Loan Guarantees).

The participating Argentine honey exporters, Nexco, HoneyMax, and ACA, claim that revocation of the order would have no effect on the level of subsidies affecting Argentine honey. They argue that the levels of subsidization are likely to remain at the current zero or de minimis levels independent of whether the order is revoked. The only significant subsidy calculated was related to the Reintegro Program. However, the Argentine honey exporters became ineligible for this indirect tax rebate on June 18, 2001. In addition, honey exporters became subject to an export tax of 10 percent. HoneyMax argues that this fact pattern, which has prevailed for the past five years, is not likely to change. With respect to the other programs found countervailable in the original investigation, their benefit levels have always been below the de minimis level, they state, and an increase in benefits from these programs is remote, and those benefits do not approach the statutorily-required level of "likely." In addition, Nexco points out that the Department recognized that the Convergence Factor expired in the 2003 review.

In their rebuttal comments, domestic interested parties argue that the Department should disregard respondents' arguments that the order should be revoked because the current level of subsidization of the Argentine honey industry is at zero or de minimis levels, and that that rate is evidence that revocation is likely to have no effect on the net subsidy rate. Domestic interested parties also note that respondents do not refute the existence of countervailable subsidy programs that benefit the Argentine honey industry. Domestic interested parties believe that respondents' arguments are flawed and inconsistent with the Department's policies regarding sunset reviews in three ways: (1) the requirement for elimination of a program or exclusion of subject companies has not been met; (2) there is the continuing existence of subsidy programs; and (3) the treatment of de minimis combined benefits is misplaced.

Specifically, domestic interested parties argue that respondents ignored the Department's practice to examine the method by which a program, such as the Reintegro Program, was terminated or changed to assess whether it may be reinstated in the future. To support their argument, domestic interested parties cite to the Policies Regarding the Conduct of Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin, 63 FR 18871, 18875 (April 16, 1998) (Policy Bulletin), quoting the SAA, H.R. Doc. No. 316, Vol.1, 103d Cong., 2d Sess. At 8888 (1994), and the Final Results of Full Sunset Review: Live Swine From Canada, 64 FR 60301, 60302 (November 4, 1999) (Final Sunset Live Swine Canada), clarifying "that the elimination of a program administratively is not as strong a basis for a finding of termination as elimination through legislative action." To further support their argument, domestic interested parties cite to Final Results of Full Sunset Review: Carbon Steel Wire Rod From Argentina, 64 FR 53331, 53332 (October 1, 1999) (Final Sunset CSWR Argentina), in which the Department applied the same reasoning in assessing modifications to the Reintegro Program by the GOA, i.e., the Department concluded that a modification of the program is not a termination and does not preclude additional modifications to the program. In that case, the Department said that the GOA had submitted no evidence that the program had been terminated and that reinstatement is not likely, and thus, there is likelihood of continuation and recurrence. Therefore, domestic interested parties conclude, the GOA may at any time confer significant subsidies to the Argentine honey industry through the Reintegro Program.

Domestic interested parties continue that the nature and structure of the program has remained virtually unchanged since it was created in 1991, although the rebate levels changed from time to time. See Honey from Argentina: Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination on Honey from the People's Republic of China, 66 FR 14521, 14524 (March 13, 2001) (Preliminary Determination), and Final Determination and I&D Memo, at I&D Memo, II.A., "Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)." As noted in the investigation, although the program was instituted in 1991, and the Argentine honey industry was made eligible for Reintegro benefits in 1996 through issuance of resolutions by the Ministry of Economics, domestic interested parties state that later changes in the Reintegro rates in the first review (2001 and 2002) were also implemented by Ministry of Economics resolutions. See Honey from Argentina: Final Results of Countervailing Duty Administrative Review, 69 FR 29518 (May 24, 2004), and accompanying Issues and Decision Memorandum (First Review Final Results and I&D Memo), I&D Memo, at I.A.1. This, they argue, demonstrates the ease with which the GOA may increase or decrease the rate of subsidy benefits to the Argentine honey industry. Furthermore, domestic interested parties conclude, the noticeable reduction in subsidy rates was the immediate result of the imposition of the countervailing duty order.

In addition, domestic interested parties claim that during the first administrative review, the GOA admitted that it and the Ministry of Economics, which has the authority to modify Reintegro rates, were under pressure from the Argentine honey industry to reinstate the program. See Verification Report for the Argentine Internal Tax Reimbursement/Rebate Program (Reintegro); Honey Production and Export Data, dated November 13, 2003. Domestic interested parties conclude that the Ministry of Economics has the authority to reinstate the Reintegro Program at any time and at any rate. Although the GOA is currently arguing that they cannot foresee the reinstatement of Reintegro benefits in the future, domestic parties argue that the countervailing duty order itself is preventing the reinstatement.

Domestic interested parties point out that, while they focused on Reintegro, their arguments apply to all programs, and argue that the Department has consistently found that it will not revoke an order where the subsidy in question can readily be re-instated. See Final Sunset CSWR Argentina, 64 FR 53331, 53332. As is evidenced in the Department's decision, domestic interested parties note the Department found programs to be terminated and not likely to be re-instated where the legislature formally terminated the respective program. In other words, the Department will consider (1) the legal method by which the government eliminated the program; and (2) whether the government is likely to reinstate the program. See e.g., Final Results of Expedited Sunset Review: Heavy Iron Construction Castings From Brazil, 64 FR 30313, 30315 (June 7, 1999) (Heavy Iron Construction Castings). In that case, the subsidy program was created legislatively and was terminated legislatively. As the Reintegro program was created legislatively but the rate for honey was reduced to zero administratively, domestic interested parties conclude that the program has not been terminated and that an increase in the rate for honey for this program is at the discretion of the Ministry of Economics of Argentina.

Domestic interested parties also contest respondents' likelihood analysis and their claim that a de minimis subsidy level indicates that the subsidization of honey will not continue. This, they say, is contradicted by the continued existence of Argentine subsidy programs potentially applicable to the honey industry.[3] Domestic interested parties point out that the Department treats the continued existence of programs as proof that a continuation or recurrence of a subsidy program is likely. See Policy Bulletin, at 18874; see also Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy, 66 FR 13909 (March 8, 2001), and Final Results of Full Sunset Review: Industrial Phosphoric Acid From Israel, 65 FR 6163, 6164 (February 8, 2000). Domestic interested parties conclude that respondents failed to demonstrate that the GOA and provincial government subsidy programs have been terminated, and thus respondents' assessment of likelihood of continued subsidization is flawed. This flawed analysis, they say, also applies to programs that have been determined not used in prior proceedings, but possibly could be used and found countervailable in the future, such as the BICE Norm 007: Line of Credit Offered to Finance Industrial Investment Projects to Restructure and Modernize the Argentine Industry and the Fundacion Export AR. See Honey from Argentina: Final Results of Countervailing Duty Administrative Review, 70 FR 36563 (June 24, 2005) (Second Review Final Results). Domestic interested parties support their argument by citing to the Issues and Decision Memorandum for the of Final Results of the Expedited Sunset Review of the Countervailing duty Order: Sulfanic Acid From India, 70 FR 53168 (September 7, 2005), and accompanying Issues and Decision Memorandum (Final Sulfanic Acid From India) at 3, where the presence of programs not used but also not terminated was considered probative of the likelihood of the continuation and recurrence of a countervailing duty subsidy. Therefore, domestic interested parties argue, respondents failed to include those programs in their likelihood analysis.

Overall, domestic interested parties claim, respondents failed to provide any evidence concerning the renunciation or legal elimination of numerous subsidy programs, including Reintegro, which still exist today. Based on the above, domestic interested parties contend the Department should consider all of the existing subsidy programs, especially the Reintegro program, in its analysis, and find that revocation of the order would likely lead to the continuation or recurrence in the coming years of significant countervailable subsidies above the de minimis level.

Domestic interested parties contrast the instant case with Cut-to-Length Carbon Steel Plate from the United Kingdom: Final Results of Full Sunset Review, 71 FR 58587, 58589

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[3] BNA Financing for the Acquisition of goods of Argentine Origin; BNA Pre-Financing of Exports Regime for the Agricultural Sector, Buenos Aires Honey Program: Line of Credit for Working Capital, Line of Credit for the Acquisition of Capital goods, Technical Assistance; Entre Rios Honey program : Law No. 7435/84; PROAPI; Province of Chaco Line of Credit Earmarked for the Honey Sector; Province of San Luis Honey Development Program: CFI Lines of Credit Provided Through the Banco de San Luis, Leasing Agreements; BNA Line of Credit for the Acquisition of Industrial and Agricultural Machinery, silos and Transportation Vehicles; Argentine Internal Tax Reimbursement/Rebate Program (Reintegro); Regional Productive Revitalization: National program for the Promotion of Development of Local Productive Initiative.

(October 4, 2006), in which the Department revoked the order based on the historical de minimis combined rate of the remaining programs for which the Department found likelihood. In the administrative reviews of this case, the Department found a total countervailable subsidy rate of 5.77 percent for 2001, and 0.57 percent for 2002 (i.e., there were two periods while the order was in effect where the combined subsidy rates was above de minimis), and the Department has not found the termination of programs such that the remaining programs have a combined de minimis rate. Therefore, domestic interested parties conclude, considering the variability of the rates, there is likelihood that the rate will again exceed de minimis.

In its rebuttal comments, the GOA rejects domestic interested parties' reliance on the subsidy rate from the original investigation, arguing that, under U.S. law and the SCM Agreement, a determination regarding likelihood in a sunset review proceeding cannot be based on the mere possibility that substantial benefits may continue or recur. Instead, the GOA contends, it must be based on an adequate assessment of the evidence in existence at the time of the sunset review. The GOA continues that Article 21.3 of the SCM Agreement establishes several fundamental requirements that an administering authority must satisfy when making its likelihood determination concerning the continuation or recurrence of subsidies. According to the GOA, under WTO jurisprudence, the Department must make a forward-looking analysis of a prospective determination, and act with appropriate diligence to arrive at a conclusion based on reconsideration and examination. The GOA insists that the Department, in making its determination on the likelihood of continued subsidization, is precluded from assuming the existence of likelihood. The GOA argues that the Department must assess all information, to draw adequate conclusions concerning likelihood.

The GOA believes that domestic interested parties' reliance on the continued existence of certain programs is misplaced, and that, as acknowledged by domestic interested parties and as determined by the Department: (1) these programs are no longer available to the honey industry; (2) these programs are not being used by the Argentine honey industry; or (3) these programs provide only de minimis subsidies. The GOA argues that there is no evidence to suggest that this will change, and thus, subsidies are not likely to continue or recur at significant levels.

In its rebuttal comments, HoneyMax argues that domestic interested parties rely on two arguments: (1) most subsidy programs have not been terminated; and (2) the imposition of the companion antidumping duty order has led to a reduced volume of subject imports. HoneyMax believes that domestic interested parties are wrong because domestic interested parties rely on the Department's determination that only one of the subsidy programs in question was terminated and that there is no evidence that the other programs have been terminated. HoneyMax argues that domestic interested parties' reliance on the Department's Policy Bulletin is misplaced. Specifically, HoneyMax contends that domestic interested parties' analysis of the Department's policies is incomplete because it does not take into consideration that the continuation of a program is qualified by an exception applicable to this case, namely, the availability of a program does not itself indicate likelihood of continuation or recurrence of a countervailable subsidy, where a company has a track record of not using a program. To support its position, HoneyMax cites to AG Der Dillinger v. United States, 26 CIT 1091, 1100 (September 5, 2002) (Dillinger). In addition, HoneyMax claims that it, the GOA, other respondents, and domestic interested parties have noted in their substantive responses that the most significant program, the Reintegro, was terminated for honey exports more than five years ago. Thus, HoneyMax argues, all Argentine honey exporters have a record of not using the program the Department found to provide above de minimis countervailable subsidies. According to HoneyMax, all other programs the Department determined to be countervailable have been found to provide only de minimis subsidy levels during the case history, and therefore, consistent with its policies, the Department must conclude that all companies relevant to this case have demonstrated that they have not used subsidy programs for more than five years. As the facts indicate, HoneyMax claims, the Department cannot rely on the mere existence of the programs at issue to find that continuation or recurrence of a countervailable subsidy is likely. In addition, HoneyMax questions domestic interested parties' conclusion regarding likelihood as, at best, a conclusion that "benefits are possible in the event of revocation." However, based on the facts of the record, they argue, the Department can only conclude that benefits under the continuing programs may be "possible," and not that they are "likely."

Furthermore, HoneyMax rejects domestic interested parties' conclusion that subsidies are likely to continue if the countervailing duty order is revoked, based on the claim that the efficacy of the companion antidumping duty order has been demonstrated through lower volumes of exports of honey from Argentina, and that imports from Argentina were likely to increase significantly if the order were revoked. HoneyMax points out that the effect of the companion antidumping duty order has no bearing on the likelihood of subsidies to continue or recur. HoneyMax contends that domestic interested parties did not provide any facts to support their claim that subsidies are likely to recur, and "seem to argue that the companion antidumping duty order is enough to provide them protection." In addition, HoneyMax maintains that Argentine honey producers have continued to participate in the U.S. market since the imposition of the orders, and that there is no reason to believe that the post-order decrease in volume suggests that subsidization is likely to continue or recur absent the countervailing duty order. Further, HoneyMax argues, domestic interested parties' only argument in support of the countervailing duty order is that most subsidy programs have not officially been terminated, and this "might" give rise to countervailable subsidies. HoneyMax concludes by reiterating that the programs in question have not provided any significant benefit to the honey exporters and producers for many years, and urging the Department to reject domestic interested parties' argument on likelihood.

Department's Position

We preliminarily find that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy on the subject merchandise. In accordance with section 752(b)(1) of the Act, in determining whether revocation of a countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect that net countervailable subsidy.

In the investigation, the Department found that 6 programs conferred countervailable subsidies: (1) Reintegro Program; (2) Regional Productive Revitalization Program; (3) BNA Pre-Financing of Exports Regime for the Agricultural Sector; (4) Province of San Luis Honey Development Program; (5) Province of Chaco Line of Credit Earmarked for the Honey sector; and (6) Province of Buenos Aires Honey Program. In the first administrative review of this order, the Department found two more programs to be countervailable, the Convergence Factor and the BNA Financing of Argentine Origin.

In the investigation and subsequent reviews, there were eleven additional programs that were not used: (1) BICE Norm 011; (2) BICE Norm 007; (3) BNA Line of Credit to Agricultural Producers of the Patagonia; (4) Production Pole; (5) Enterprise Restructuring Program; (6) SGRs - Government backed loan Guarantees; (7) Fundacion Export; (8) PROAPI; (9) Province of Chubut Law No. 4430/98; (10) Province of Santiago del Estero Creditos de Confianza; and (11) Entre Rios Honey Program Law No. 7435/84.

In this sunset review, we have considered the status of all programs found countervailable over the history of the order, and we preliminarily determine that six of the eight programs are still ongoing. In addition, one program which is no longer operational, the Regional Productive Revitalization program, continues to provide residual benefits. Therefore, subsidization is likely to continue or recur. We also preliminarily determine that one program previously found countervailable, the Convergence Factor, has been terminated with no residual benefits or replacement program. See Final Determination and I&D Memo, at II.A.3.

We disagree with the GOA regarding its claim that the honey industry never received subsidies greater than a de minimis level established in the WTO Agreement on Subsidies and Countervailing Measures and in U.S. law. In the final determination of the investigation, the Department determined that the GOA provided countervailable subsidies to Argentine honey producers and exporters through the Reintegro and five other programs. This determination was made in accordance with U.S. law and international obligations.

We also disagree with the GOA and the other respondents that the history of the case indicates that the net subsidy rates for honey from the Reintegro program and the other programs will remain at the low levels determined in the most recently completed administrative review. On the contrary, we agree with domestic interested parties that the GOA and respondents did not provide sufficient evidence to demonstrate that the remaining seven programs determined to be countervailable have been terminated, with no residual benefits, in accordance with 19 CFR 351.526(d)(1) and (2), including the Reintegro program. We disagree with HoneyMax that the Department determined the Reintegro program to be terminated. The Department determined in the final results of the first administrative review that the Reintegro rate was set at zero throughout 2002 for both bulk and processed honey, but did not determine that the program had been terminated in accordance with 19 CFR § 351.526(b). See First Review Final Results and I&D Memo, I&D Memo, at II.A.1.a.

In evaluating whether a program has been terminated, the Department will consider (1) the legal method by which the government eliminated the program; and (2) whether the government is likely to reinstate the program. See, e.g., Heavy Iron Construction Castings. The Reintegro program was created by the GOA under Decree 1011/9.[4] However, the rebate levels and eligibility can be modified by the Ministry of Economics. See Preliminary Determination, at 14521. The Reintegro rebate rate for honey was set to zero administratively through a Ministry of Economics resolution. The Department did not determine that the program had been terminated, as the change made with respect to honey neither affected the ongoing operation of the Reintegro program with respect to other industries, nor otherwise met the requirements of 19 CFR 351.526(a). Furthermore, the GOA's arguments that the most recently calculated countervailable subsidy rates of zero for Reintegro, and de minimis overall, are not relevant to our likelihood determination, which is largely based on the current operational status of programs found countervailable. Therefore, we preliminarily determine the remaining seven programs have either not been terminated or continue to have residual benefits: As such there is likelihood in accordance with 752(b)(1) of the Act.

We disagree with HoneyMax, citing to Dillinger, that the domestic interested parties' reliance on the Department's Policy Bulletin is incorrect and incomplete, and agree with the domestic interested parties' conclusion that the continuation of a program determined to be countervailable is highly probative of the likelihood of continuation or recurrence of countervailable subsidies. While we agree that in Dillinger the court concluded that "{a}n affirmative likelihood determination cannot rest on the mere possibility that benefits may continue or recur in any substantial amount for any significant period of time beyond the end of sunset review," the rationale in that case rested on changes in U.S., European, and German laws subsequent to the imposition of the order. Alternatively, in this sunset review, there have been no reported or documented changes in Argentine law. The fact that the programs have not been terminated is probative of the likelihood of continuation or recurrence of countervailable subsidies.

For the reasons provided above, based on the continued existence of programs found to confer countervailable subsidies, and insufficient documentation to support a determination of termination of all programs, we preliminarily determine that revocation of the countervailing duty order would be likely to lead to the continuation or recurrence of a countervailable subsidy.

Further, we disagree with domestic interested parties' argument regarding programs found to be not used in all segments of the proceeding. The Department has not previously determined

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[4]The GOA established a rebate system in 1971, which was known as the "reembolso" program. In 1986, Decree 1555/86 was promulgated to implement the reembolso program in a manner consistent with the General Agreement on Tariffs and Trade. See Preliminary Determination, at 14521.

that these programs are countervailable and cannot render such a decision in this sunset review. Therefore, we have not considered those programs in our likelihood analysis.

Finally, domestic interested parties argue that the dramatic decrease of Argentine honey exports to the United States is a direct result of the efficacy of the companion antidumping duty order order. However, the statute does not instruct the Department to consider the volume of exports in determining if the revocation of the countervailing duty order would likely lead to a continuance or recurrence of the countervailable subsidy. See section 752(b)(1) of the Act.

2. Net Countervailable Subsidy Likely to Prevail

Interested Party Comments

Domestic interested parties argue that the net countervailing duty rate found in the original investigation is the appropriate rate to report to the ITC, as that subsidy rate best reflects the behavior of the respondents free of the constraints of a countervailing duty order. Thus, domestic interested parties contend, the Department should follow the principles of the SAA and the agency's Policy Bulletin (see 63 FR 18873), and rely upon the 4.53 percent ad valorem net subsidy rate established in the original investigation.

The GOA argues that, although the countervailing duty rates were 5.85 percent for the investigation, 5.77 percent for 2001 (first review), and 0.57 percent for 2002 (first review), the benefits used in these calculations are no longer extended to the honey sector. Furthermore, the current aggregate countervailing duty rate is zero. The respondents, Nexco, HoneyMax, and ACA, support the GOA's position, citing to the same fact pattern. All respondents and the GOA argue that the rate likely to prevail in the event of revocation of the order is zero or de minimis.

In their rebuttal comments, domestic interested parties reiterate their reasoning why the rate of the investigation should prevail, citing to 19 U.S.C. § 1675a(b)(3) and the Department's regulations. See also Preliminary Results of Full Sunset Review: Live Swine From Canada, 64 FR 34209, 34214 (June 25, 1999) (Preliminary Sunset Swine Canada) (unchanged in final results). Respondents, they argue, ignore all but the most recent administrative reviews by claiming that a zero or de minimis rate would prevail if the order were revoked. Furthermore, domestic interested parties contend, respondents failed to provide a compelling reason for the Department to depart from its preference to select the net countervailable subsidy rate established during the investigation. Domestic interested parties insist that the rate determined in the investigation is the appropriate rate to use because the level of subsidies granted by the GOA to Argentine honey producers and the level of exports of Argentine honey to the United States following the imposition of the order validated the accuracy of the original investigation rate. The significant impact of the countervailing duty order was demonstrated by the reduction in the Reintegro rate provided to honey exporters by the GOA, and the ease with which a higher rate could be reinstated. Domestic interested parties continue by reiterating the details of the subsidy rate changes of the Reintegro program over time, and elaborate on the reduced export quantities of Argentine honey to the United States following the imposition of the order, which they say, confirm that the investigation rate is appropriate.

Finally, domestic interested parties contend that respondents erred in ignoring the Department's constraints with respect to adjusting the net countervailable subsidy rate from the original investigation, namely, that the Department is limited to adjusting the investigation rate in instances in which subsidy programs were found in subsequent reviews to be terminated, a program-wide change was determined, or a rate ignores a program found to be countervailable in a subsequent review. See Preliminary Sunset Swine Canada, 64 FR 34209, 34214. Domestic interested parties contend that no such adjustment to the net countervailable subsidy rate is necessary in the instant case, citing Policy Bulletin and Grain-Oriented Electrical Steel from Italy; Final Results of Full Sunset Review of Countervailing Duty Order, 65 FR 65295 (November 1, 2000), and accompanying Issues and Decision Memorandum, I&D Memo, at 6-7.

The GOA rebuts domestic interested parties' reliance on the original investigation rate as incorrect, considering its arguments as discussed above in the Likelihood of Continuation or Recurrence of a Countervailable Subsidy section of this memorandum. The GOA believes this to be contrary to U.S. law and inconsistent with U.S. WTO obligations.

In its rebuttal comments, HoneyMax joins the GOA in arguing that the Department should reject the use of the net subsidy rate from the original investigation. Instead, HoneyMax contends that the Department should apply the rate from the most recently completed 2003 administrative review, which determined that the existing countervailable subsidies were de minimis, which it claims, is the rate likely to prevail if the order were revoked. See AG Der Dillinger v. United States, 310 F.Supp.2d 1347, 1349 (January 29, 2004) (Dillinger 2004).

Department's Position

The Department normally will provide to the ITC the net countervailable subsidy that was determined in the original investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. The Department may make adjustments to the investigation rate where, for example, the Department has found in subsequent reviews that a program has been terminated, there has been a program-wide change, or an additional program was found to be countervailable. See, e.g., Stainless Steel Sheet and Strip in Coils From Italy: Final Results of the Full Sunset Review of the Countervailing Duty Order, 70 FR 23094, (May 4, 2005), and accompanying Issues and Decision Memorandum, at Comment 6 (SSPC from Italy Sunset Review). The purpose of the net countervailable subsidy in the context of sunset reviews is to provide the ITC with a rate which represents the countervailable rate that is likely to prevail if the order is revoked.

As noted above, we have preliminarily determined that for all six programs found countervailable in the investigation, subsidization is likely to continue or recur. In addition, one of the two additional programs which were found countervailable in the first administrative review remains in place: BNA Financing of Argentine Origin. In accordance with the SSPC from Italy Sunset Review, we are including the rate from this program in our calculation of the net countervailable subsidy likely to prevail. For the six ongoing programs determined to be countervailable in the original investigation, we have relied on the original countervailable subsidy rate from the investigation. For the one ongoing program, determined to be countervailable in the first review, we relied on the countervailable subsidy rate from the first administrative review, as appropriate. Our determination of the net countervailable subsidy likely to prevail is 5.85 percent ad valorem.[5]

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidies, and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the WTO ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following programs fall within the definition of a prohibited subsidy under Article 3.1 of the ASCM, as receipt of benefits under these programs are contingent upon export activity, or favor the use of domestic over imported goods.

1. *Argentine Internal Tax Reimbursement Program (Reintegro)*: Rebate of prior-stage cumulative indirect taxes. It is calculated as a percentage of the FOB invoice price of the exported product.

2. *BNA Pre-Financing of Exports Regime for the Agricultural Sector*: Short-term credit offered by BNA to exporters for the financing of agricultural exports. This program is contingent on export performance.

3. *BNA Financing of Argentine Origin*: Program provides loans for the purchase of capital goods of Argentine origin. This program constitutes an import substitution subsidy under § 771(5A)(C) of the Act. This program was not used prior to the first administrative review, i.e., in the investigation.

The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are

[5] Petitioners argue that the rate likely to prevail is 4.53 percent ad valorem. However, the investigation established a cash deposit rate of 5.85 percent ad valorem, and we have relied on that rate in our consideration of the rate likely to prevail.

subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We are therefore providing the ITC with the following program descriptions:

1. *Regional Productive Revitalization*: National program for the promotion and development of local productive initiative. This program provided loans for the acquisition of capital goods, technology, working capital, training and technical assistance. This program was established in 1995, but discontinued granting loans in 1999.

2. *Province of San Luis Honey Development Program*: Established in 1990 to promote honey production in underdeveloped areas in the province. This program provides for long-term, fixed rate, Peso.

3. *Province of Chaco Line of Credit*: This program is earmarked for the honey sector and provides for long-term, fixed rate Peso loans. Decree No. 2076/96 (December 1996), through Provincial Law 4320, establishes an emergency line of credit following natural disasters affecting agriculture. This program also provides for long-term loans for the acquisition of beekeeping equipment.

4. *Province of Buenos Aires Honey Program*: This program provides three different types of short-term loans to finance operating expenses, long-term loans to finance the acquisition of equipment, and technical assistance and training.

Preliminary Results of Review

The Department preliminarily finds that revocation of the countervailing duty order on honey from Argentina would be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in this memorandum. Further, we find the net countervailable subsidy likely to prevail if the order were revoked to be 5.85 percent ad valorem for all producers or exporters of honey from Argentina.

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of review in the Federal Register.

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David M. Spooner
Assistant Secretary
for Import Administration

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Date